

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DIEGO FRAUSTO,)	
Plaintiff,)	1:10-cv-1363
)	
v.)	Judge Zagel
)	
IC SYSTEM, INC.,)	
Defendant.)	
)	
)	JURY DEMANDED

**PLAINTIFF’S RESPONSE TO ICS’ STATEMENT OF
ADDITIONAL FACTS “REGARDING WILLFULNESS”**

1. At the time IC made phone calls to plaintiff, and now, IC believed that, under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, a debt collector could lawfully use an automatic telephone dialing system or prerecorded message to call a debtor on his cell phone if the debtor had given his cell phone number to his creditor. (Affidavit of Scot Ellison, attached as Exhibit 1, ¶ 3)

RESPONSE: Denied. This alleged fact is unsupported in the record. The entirety of exhibit 1, paragraph 3 of the Ellison affidavit says:

IC and PayPal, Inc. (“PayPal”) entered into a contract under which IC Collects debts that are owed to PayPal.

Further, this alleged fact is not material to any issue in the litigation, including willfulness. 47 U.S. C. §312(f)(1); *Sengenberger v. Credit Control Services, Inc.*, 2010 WL 1791270 (N.D.Ill. May 05, 2010); adhered to on Reconsideration 2010 WL 6373008 (Jun 17, 2010).

2. IC believed that the calls it made to the plaintiff complied with the TCPA because plaintiff had given his creditor, PayPal, the number that IC called. (Id. at ¶ 4).

RESPONSE: Denied. This alleged fact is unsupported in the record. The entirety of exhibit 1, paragraph 4 of the Ellison affidavit says:

PayPal asked IC to collect a debt that was owed by the plaintiff, Diego Frausto, in the amount of \$254.41.

Further, this alleged fact is not material to any issue in the litigation, including willfulness. 47 U.S. C. §312(f)(1); *Sengenberger v. Credit Control Services, Inc.*, 2010 WL 1791270 (N.D.Ill. May 05, 2010); adhered to on Reconsideration 2010 WL 6373008 (Jun 17, 2010).

3. IC's beliefs concerning TCPA compliance are based on the declaratory ruling that the Federal Communications Commission issued in January 2008 in response to a petition filed by the ACA International, Inc. ("ACA"). See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, FCC Declaratory Ruling No. 07-232, 23 FCC Rcd. 559 ¶ 9-10. IC's beliefs are also based on compliance materials published by the ACA, which provide information about legal developments that affect debt collectors. (Id. at ¶ 5).

RESPONSE: Denied. This alleged fact is unsupported in the record. The entirety of exhibit 1, paragraph 5 of the Ellison affidavit says:

To enable IC to collect the debt, PayPal gave IC Frausto's contact information, including the phone number xxx-xxx-7867.

Further, this alleged fact is not material to any issue in the litigation, including willfulness. 47 U.S. C. §312(f)(1); *Sengenberger v. Credit Control Services, Inc.*, 2010 WL 1791270 (N.D.Ill. May

05, 2010); adhered to on Reconsideration 2010 WL 6373008 (Jun 17, 2010). Further still, as explained in plaintiff's motion for summary judgment and as evident in the 2008 FCC declaratory ruling, parties are free to restrict the scope of TCPA consent as PayPal chose to do in its contract with plaintiff.

4. IC intends to fully comply with all applicable laws, including the TCPA, when it collects debts. (Id. at ¶ 6).

RESPONSE: Denied. This alleged fact is unsupported in the record. The entirety of the Ellison affidavit, paragraph 6 says:

In August 2009 and September 2009, IC tried to collect Frausto's debt by sending him a collection letter and placing collection calls to the phone number that had been provided by PayPal (xxx-xxx-78697).

Further, this alleged fact is not material to any issue in the litigation, including willfulness. 47

U.S. C. §312(f)(1); *Sengenberger v. Credit Control Services, Inc.*, 2010 WL 1791270 (N.D.Ill. May 05, 2010); adhered to on Reconsideration 2010 WL 6373008 (Jun 17, 2010).

Respectfully submitted,

/s/Alexander H. Burke

BURKE LAW OFFICES, LLC

155 N. Michigan Ave., Suite 9020

Chicago, IL 60601

(312) 729-5288

(312) 729-5289 (fax)

ABurke@BurkeLawLLC.com

www.BurkeLawLLC.com